IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 7421 of 2006(H)

PETITIONER:

M.THARAMONY,
UPPER PRIMARY SCHOOL ASSISTANT,
KOLACHERRY A.U.P. SCHOOL, KOLACHERRY,
KANNUR DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS:
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1. THE ASSISTANT EDUCATIONAL OFFICER,
THALIPARAMBA.

2. THE MANAGER,
KOLACHERRY A.U.P.SCHOOL,
KOLACHERRY, KANNUR DISTRICT.

R2 BY ADV. SRI.R.K.MURALEEDHARAN
GOVERNMENT PLEADER SRI. T.T. MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7421/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. B-1/5238/95/K.DIS DT. 23/11/95 BY THE R1.

EXT.P2. COPY OF THE ORDER NO. B-1483/97 DT. 28/4/97 BY THE R1.

EXT.P3. COPY OF THE ORDER DT. 2/6/97 BY THE MANAGER OF THE SCHOOL.

EXT.P4. COPY OF THE JUDGMENT IN OS NO. 167/19967 ON THE FILE OF THE COURT OF THE MUNSIFF, KANNUR DT. 4/11/97.

EXT.P5. COPY OF THE RELEVANT PAGE OF THE CERTIFICATE BOOK OF THE PETITIONER.

EXT.P6. COPY OF THE GO NO. 4418/99/G.EDN DT. 29/09/99.

EXT.P7. COPY OF THE ORDER OF SUSPENSION WITH MEMO OF CHARGES DT. 9/3/06 BY THE R2.

RESPONDENT'S EXHIBITS

EXT.R2A. COPY OF THE DECREE IN O.S NO. 169/96 ON THE FILE OF THE MUNSIFF COURT, KANNUR DT. 14/11/97.

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A.K. Basheer, J.

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W.P(C) No. 7421 of 2006

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Dated this the 26th day of July 2007.

J U D G M E N T

Petitioner who is an Upper Primary School Assistant working in the school under the management of respondent No.2 impugns Ext.P7 order of her suspension and prays for a further direction to permit her to continue in service.

2. It is not in dispute that petitioner was initially appointed in the school by the then Manager Sri.Kunhanandan Nair in a leave vacancy with effect from November 6, 1995 till December 10, 1995. Ext.P1 shows that the said appointment was approved by the Department. In O.S.No.167/96, the Munsiff's Court, Kannur had found that Sri.Kuhanandan Nair was not in a sound and disposing state of mind at the time when the petitioner was appointed as a leave substitute. Accordingly it was declared that the said appointment of the petitioner was null and void. A copy of the judgment is on record as Ext.P4.

3. However petitioner was subsequently appointed against an additional post of Upper Primary School Assistant with effect from June 2, 1997. The said appointment was approved by the Department with effect from July 15, 1997 as revealed from Ext.P3. In fact the above regular appointment of the petitioner was made by Smt.C.O.Janaki Amma, the widow of late Kunhanandan Nair who had passed away some time in the year 1996. It is further seen

admitted by the Department that the Government had approved the appointment of Smt.Janaki Amma as the Manager for the relevant period. But in spite of the fact that petitioner was appointed by a competent manager against a regular vacancy, the Manager who succeeded Smt.Janaki Amma issued Ext.P7 order suspending the petitioner on the ground that the civil court had declared that she was appointed by an incompetent Manager and that therefore she was not eligible to continue as Teacher.

4. It is pertinent to note that in the civil suit referred to above, the appointment of the petitioner against the short term leave vacancy alone was under challenge. The court found that Sri.Kunhanandan Nair who had made the said appointment was incompetent since he was not in a sound and disposing state of mind. It is beyond controversy that petitioner was subsequently appointed against a regular vacancy with effect from July 2, 1997 by a competent Manager viz. Smt.Janaki Amma whose appointment as Manager was approved by the Department. Accordingly petitioner's appointment against the regular vacancy was also approved by the Department. In that view of the matter the order of suspension is ex facie illegal and invalid. Therefore Ext.P7 is quashed.

Writ Petition is allowed.

A.K. Basheer
Judge.

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